IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE MR JUSTICE R.SUBHASH REDDY
WRIT PETITION NO : 18904 of 2006

Dated 19th January 2007

Between
M.K. Chandrasekhar

....Petitioner

and

The Secretary, Government of AP,
Education Department, Secretariat, Hyderabad and ors.

...Respondents

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 18904 of 2006

ORDER:

This Writ Petition is filed seeking Writ of Mandamus to declare the action of the third respondent in not recovering an amount of Rs.80,000/- from the fourth respondent as per the letter addressed by the third respondent, as illegal and arbitrary.

The petitioner is working as Plant Attendant in Railway Department at Guntakal. The late husband of the fourth respondent, who was in employment of the Education Department, had borrowed personal loan of

Rs.80,000/- from the Syndicate Bank, Guntakal Branch. For the said loan amount, the petitioner stood as gurantor. It appears that an undertaking was given by the Mandal Educational Officer to deduct the said loan amount from the terminal benefits of the husband of fourth respondent. It is the case of the petitioner that in spite of such an assurance from the Mandal Educational Officer, he is not deducting the said amount and in view of the death of the original borrower, the said loan amount is being recovered at the rate of Rs.1800/- per month from his salary paid through the fifth respondent-bank.

The fifth respondent has filed counter affidavit stating that the principal borrower has submitted salary particulars issued by the Mandal Educational Officer, Tuggali at the time of grant of loan and the bank has obtained undertaking from the employer as per the procedure. It is stated that the petitioner is the gurantor and having given an undertaking, he is jointly and severally liable for repayment of the said amount borrowed by the principal borrower. It is stated that since the fifth respondent-bank has general lien over the account of the petitioner, the bank is deducting the amount at Rs.1800/- per month payable by the husband of fourth respondent under the terms and conditions of the loan.

In this case, it is not in dispute that the petitioner stood as gurantor for the loan secured by the

late husband of the fourth respondent. Merely because there was also an undertaking by the third respondent, it is not open for the petitioner to plead that the loan amount should be deducted by the third respondent from the terminal benefits payable to the fourth respondent. The petitioner being the gurantor, he is jointly and severally liable for repayment of the loan amount. The recovery of the said loan is being effected from the account of the petitioner in view of the general lien over the account of the petitioner. In the case of *Syndicate Bank Vs. Vijay Kumar and ors*[1], the Supreme Court has held that in mercantile system, the bank has a general lien over all forms of securities or negotiable instruments deposited by or on behalf of the customer in the ordinary course of banking business and that the general lien is a valuable right of the banker judicially recognized and in the absence of an agreement to the contrary, a banker has a general lien over such securities or bills received from a customer in the ordinary course of banking business and has a right to use the proceeds in respect of any balance that may be due from the customer by way of reduction of customer's debit balance. In view of the same, the fifth respondent-bank is recovering the said loan amount from the account of the petitioner, but not from the salary of the petitioner, in view of the general lien over the account of the petitioner. In any event, the matter is in the nature of contractual obligation, and this Court is always slow in issuing directions in such matters by entertaining

petitions under Article 226 of the Constitution of India. In that view of the matter, I do not find any merit in this Writ Petition.

The Writ Petition is accordingly dismissed. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 19-01-2007
Msnr.

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[1] (1992) 2 SCC 330